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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,816	03/07/2002	Michael P. Ferraioli	FERR-0001	8009
23550	7590	03/03/2004	EXAMINER	
HOFFMAN WARNICK & D'ALESSANDRO, LLC			SMITH, JAMES G	
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ALBANY, NY 12207			PAPER NUMBER	
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DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/092,816

Applicant(s)

FERRAIOLI, MICHAEL P.

Examiner

James G Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-30 and 32-34 is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-11, 13-16, 18, 19 and 35 is/are rejected.
- 7) ☒ Claim(s) 6, 12 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 12/10/2003 have been fully considered but they are not persuasive. Examiner acknowledges that Claim 30 was inadvertently marked as rejected on the Office Action Summary. The file wrapper correctly indicates the claim being allowed.

Applicant argues that the combination of Wickers in view of Wilkerson does not teach a footwear donning device with a flexible fore handle. Examiner contends that one of ordinary skill in the art would have simply combined the teachings of Wickers and Wilkerson to create a footwear donning device with a flexible fore handle to facilitate a user donning footwear.

Applicant argues that the handle of Wilkerson is not flexible to go around the heel of a user and that if the handle was flexible it could not provide a strong enough downward force so that the device could assist in removing shoes. However, the instant application does not specify a calculated degree of flexibility that the fore handle has so it is believed that a fore handle could be flexible enough to move around the heel of a user and still have enough rigidity to provide sufficient down force, if desired. The recitation in Wilkerson that the handle "could be constructed... so as to have the necessary strength and desired degree of flexibility" clearly shows that this handle is intended to provide both strength and flexibility. Wilkerson simply teaches a handle for a footwear donning device that when used in combination with the footwear donning device of Wickers makes the instant invention of Claim 1. One of ordinary skill in the art would have realized that the flexible handle taught by Wilkerson in combination with the footwear donning device of Wickers would make the device of the instant invention to provide a user with easier to use footwear donning device. The rejections based on a lack of criticality are

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argued by Applicant as being supported in the Specification and cites numerous recitations throughout. However, the recitation that a certain length is used to accommodate a relatively large foot does not provide any criticality for that certain length. How was the length determined? What more than rudimentary experimentation was required to develop the dimensions? With respect to Claim 11, the horn is not required to be separate and distinct and therefore the previous rejection remains. With respect to Claim 31, the fact that the curved portion provides Wickers with longitudinal rigidity does not mean complete absence of longitudinal flexibility. Newly added Claim 35 is addressed below.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 7-11, 13-16, 18, 19, 30, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wickers (1,690,516) in view of Wilkerson (6,283,342). Wickers discloses a footwear donning device with a carriage suitable for holding footwear being donned. The handle of Wickers is not specifically taught as being flexible, but is disclosed as being substantially long to prevent a user from having to stoop over when donning footwear. Wilkerson teaches an elongated handle in combination with another footwear donning device, which could be constructed from a number of materials so as to have the necessary strength and desired degree of flexibility. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a handle as taught by Wilkerson in combination with

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the footwear donning device of Wickers to make the device easier to use. With respect to Claim 2, the carrier plate of Wickers device has a pair of opposing sides extending beyond the fore handle and the carrier plate has a rounded end. With respect to Claims 3 and 4, it would have been obvious that the opposing sides may be chosen to be about 4 inches apart since applicant has presented no evidence of the criticality of this claimed range (viz. the range extending from a small amount less than 4 inches to a small amount greater than 4 inches). In re Hoeschele, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969). Similarly it would have been obvious that the carrier plate may extend beyond the fore handle by at most approximately 2.5 inches since applicant has presented no evidence of the criticality of this claimed range (viz. the range extending from an amount less than 2.5 inches to a amount approximately equal to 2.5 inches). In re Hoeschele, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969). With respect to Claim 5, the footwear donning device has two hook lobes (detail 12). With respect to Claim 7, there are opposing joints attaching each hook lobe to the carrier plate. With respect to Claim 8, the hook lobes each have a curved portion and a rounded portion extending beyond the joint attaching the lobe to carrier plate in the direction of the fore handle. With respect to Claim 9, the joints are flexible. With respect to Claim 10, it would have been obvious that each joint may be less than approximately 0.75 inches long since applicant has presented no evidence of the criticality of this claimed range (viz. the range extending from an amount less than 0.75 inch to a amount approximately equal to 0.75 inch. In re Hoeschele, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969). With respect to Claim 11, the footwear donning device (detail 5) serves as a horn also which assists in removing footwear. With respect to Claim 13, the horn portion also assists in donning a shoe. With respect to Claim 14, the device of Wickers does not specifically teach the presence of a hole for enabling the

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device to be stored, but the handle portion of Wilkerson has a loop handle portion that would provide a suitable hanging portion for storing the shoe donning device. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a loop portion on the handle on the device of Wickers as taught by Wilkerson to enable the device to be easily stored. With respect to Claim 15, it would have been obvious that the fore handle may be chosen to be chosen to have a length of about 9 inches since applicant has presented no evidence of the criticality of this claimed range (viz. the range extending from a small amount less than 9 inches to a small amount greater than 9 inches). With respect to Claim 16, it would have been obvious that the device may be chosen to have a length of about 28 inches since applicant has presented no evidence of the criticality of this claimed range (viz. the range extending from a small amount less than 28 inches to a small amount greater than 28 inches). With respect to Claims 18 and 19, sheet metal is said to make the device of Wickers attached to the handle portion, but Wilkerson teaches a footwear donning device being made from various plastics decreasing weight and cost and would be a suitable modification to the device of Wickers to make the device lighter and cheaper. With respect to Claim 31, the carriage of Wickets being made of sheet metal would inherently have some longitudinal flexibility.

Claim Rejections - 35 USC § 103

4. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wickers (1,690,516) in view of Wilkerson (6,283,342) as applied to claim 1 above, and further in view of Santamaria (6,056,171). Wickers in view of Wilkerson essentially teaches the device of Claim 35, but fails to teach the device lifting the footwear during donning. Santamaria discloses a sock donning aid that places the sock on the device and that lifts the sock during donning and has a

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structure similar to the one taught by Wickers in view of Wilkerson. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized the structure as taught by Wickers in view of Wilkerson to further increase the utility of the device.

Allowable Subject Matter

5. Claims 6, 12, and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 20-30 and 32-34 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Independent Claims 20 and 32 as well as their dependents all require the footwear donning device having a longitudinally curved carriage for holding a sock during donning in combination with a handle.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James G Smith whose telephone number is 703-605-4225. The examiner can normally be reached on 8:00-5:00, off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGS
2/23/2004


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